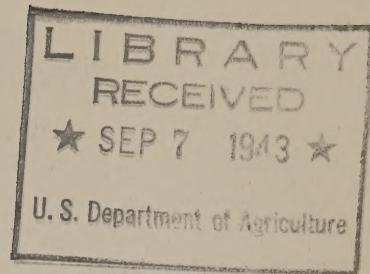


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MASSACHUSETTS STATE MILK CONTROL ACT

PAPER NO. 11. Series of State Milk Control Acts,  
Dairy Section, Agricultural Adjustment Adminis-  
tration, United States Department of Agriculture.

September 15, 1937.

## INTRODUCTION

This is the eleventh of a series of papers designed to make available, in a condensed and convenient form, information concerning State milk control acts, the type of regulation issued thereunder, and, in general, the legal developments in connection with their administration and enforcement.

The series, to date, includes a paper on each of the following State controls: Indiana, Alabama, Connecticut, California, New Jersey, Virginia, New York, Pennsylvania, Rhode Island and Vermont. Other papers are in process of preparation, there being at the present time some twenty States having milk control laws.

It is expected that a general summary of all the State acts and regulations will be prepared when the review of individual State acts and regulations is completed. In this connection some comparison may be made. These papers omit much detail which might be helpful to those concerned with legislative or administrative problems of State milk control. Those who desire more complete information will undoubtedly find it to their advantage to get in touch with the officials charged with the administration of these acts.

STATE MILK CONTROL IN MASSACHUSETTS  
THE ACT, ITS ADMINISTRATION AND LEGAL STATUS

PART ONE

I. General Character of Legislation.

The Massachusetts Milk Control Law<sup>1/</sup> was enacted in the summer of 1934<sup>2/</sup> to meet a grave public emergency occasioned, in the opinion of the State Legislature, by a threatened interruption of an abundant supply of pure milk to the public, due largely to the disparity between the prices producers received for their milk and the prices they paid for essential commodities. The production and distribution of milk<sup>3/</sup> is declared in this act to be an industry affected with a paramount public interest, and regulation of the milk marketing industry and control generally of all milk sold "or offered or exposed for sale" to the people of the State are the goals fixed in this law.

The statute originally had two years to run, but before the expiration date, June 30, 1936, it was reenacted<sup>4/</sup> in toto and extended to June 30, 1938<sup>5/</sup> as "an emergency law, necessary for the immediate preservation of the public convenience," since "the deferred operation" of the Act of 1934 "would defeat its purpose." Clarifying and strengthening amendments--with no change in the date of termination--have been added by Chapter 428 of the Acts of 1937<sup>6/</sup>.

Type of Governing Agency

Created within the Department of Agriculture is a Board of Milk Control of three persons, citizens of Massachusetts, appointed and removable by the Governor, with the advice and consent of the Council, and each receiving, unless otherwise employed by the State, a per diem of \$10 for each day's attendance at board meetings and, in any event, necessary travel expenses. The board, subject to the approval of the Governor and Council, may appoint and fix the compensation and the duties of an administrator, who may be a member of the board; and may also, subject to appropriation, appoint and fix the compensation of accountants, investigators, technical experts, clerical help, and others, and make such expenditures as may be necessary effectively to execute the functions vested in the board.

1/ Known as Chapter 376, Acts of 1934.

2/ The law was approved June 24, 1934.

3/ "Milk" is defined in the act and subsequent acts to include "fluid milk and cream, and fresh, sour or storage skimmed milk and buttermilk, irrespective of whether or not any such milk is flavored."

4/ By Chapter 300, Acts of 1936, approved May 26, 1936.

5/ "and thereafter only if and during such period of time as the governor, after investigation, shall declare that the emergency still exists."

6/ Approved May 29, 1937.

### Conditions Under Which Powers of Board May Be Exercised

Except in the matter of resale prices the board is empowered to proceed in all matters upon its own motion, subject to provisions in the law. In the actual fixing of resale prices the board is authorized to act upon its own initiative; but before such prices may be fixed for any market 7/ or markets, there shall be a petition in writing by at least 25% of the Massachusetts producers within the applicable market production zone 8/ requesting the board to establish minimum resale prices for any of such markets; whereupon it is left to the board to determine whether such resale prices shall be fixed in accordance with the other provisions of the act. Thereafter, without petition or consent by producers or others, the board may alter, rescind or maintain such resale prices as in its judgment conditions may warrant.

### Source of Financing

The cost of administering the act is met by annual license fees of dealers not more than \$5 in amount for any dealer, and by monthly assessments 9/ of not more than two cents per hundredweight of the milk distributed or sold by each licensed dealer in any of the markets subject to the act and irrespective of where such milk was produced. One-half of such payment may be deducted rateably by the dealer from amounts due his producers. If the same milk is handled by more than one dealer, the first dealer to handle the milk within the State shall be the dealer to pay the volume assessment.

### Statutory Protective Provisions

The act contains two "saving" clauses. One, a separability clause, provides that if any section or part thereof shall be declared unconstitutional or inoperative, the validity of the remaining sections or parts thereof shall remain unaffected, except only to the extent that an entire section or part thereof may be inseparably connected in meaning and effect with the section or part thereof so declared unconstitutional or inoperative. The other saving provision is implicit rather than explicit, and declares that the intention and purpose of the act extends to the regulation, etc., of the milk marketing industry of the State "to the full extent permitted by the constitution of the commonwealth and of the United States respectively."

7/ "Market" means "one or more cities or towns or any portions thereof designated by the board as a natural marketing area."

8/ "Market production zone" means "the dairy farms in a geographical area designated by the board as such and approved by local board or boards of health having jurisdiction over the territory comprised within the market, in which area a supply of milk from producers having permits from such local boards of health under section forty-three of chapter ninety-four of the General Laws may be obtained at the shortest practical distance and/or in the shortest reasonable period of time to meet the consumer demand of such market for milk."

9/ Except in the case of one who is also a producer, selling to consumers not more than 50 quarts of milk daily. Such producer-dealer, though exempted by the present law from paying the volume assessment, must now pay a license fee, by order of the board, as follows: \$2 annually if daily sales do not exceed 30 quarts; \$5 annually for daily sales above 30 and up to 50 quarts. Above 50 quarts the annual license fee of \$5, plus the applicable volume assessment fee, is required.

## II. Regulatory Provisions.

### Powers of the Board

Investigation.-- Broad powers of investigation are vested in the board. It is specifically empowered and charged with the duty "to investigate and regulate, as the emergency permits or requires, all matters pertaining to market production zones, and to the production, manufacture, processing, storage, transportation, disposal, distribution and sale of milk and milk products 10/ within the commonwealth." Powers of investigation are made vital through the right to hold hearings, compel attendance of witnesses and the production of books and records and to place witnesses under oath. Also any members of the board, or any employee designated for the purpose, may enter, at all reasonable hours, every place where milk or any of its products is being produced, stored, sold or otherwise handled; and may also inspect all books and records relating to milk in any place within the State. Information obtained from inspection of such books and records must be treated as confidential and "shall not be disclosed by any person except as may be required in the proper administration of the act;" but the board may use this and similar information for compilation and publication of milk industry statistics and so as not to disclose in any way the name of the dealer or the information thus obtained.

Mediation and arbitration.-- The board is authorized to mediate or arbitrate any controversy or issue among or between producers and milk dealers either as individuals or as groups, associations or corporations.

Licensing powers.-- Except in the case of certain stores, 11/ all milk dealers 12/ buying milk from producers or others for sale within the State are required to be licensed, and in applying to the board for their licenses, they must give certain specified information as to the nature and location of

10/ "Milk products" is a term not defined in the act and its inclusion is not necessary if meant to cover cream, skimmed milk and buttermilk, since these products (or by-products) are included in the definition of milk. An examination of the administrative activities of the board shows that no regulation has been attempted with respect to butter, cheese, milk in hermetically sealed cans, etc., or in fact anything lacteal in nature other than milk as defined in the law. On the other hand, it may be that the board would feel justified, under the wording quoted above, in investigating all phases of the industry, including those relating to butter, cheese, etc.

11/ That is, any dealer buying milk from any licensed dealer and whose only sales are at a store or stores. (See "(3)" under "Limitations and Exceptions", below.)

12/ "Milk dealer" means "any person, including in such term, any corporation and any subsidiary and affiliate of such corporation, irrespective of whether such person is also a producer or an association of producers, engaged within the commonwealth in the business of purchasing, pasteurizing, bottling, processing, distributing or otherwise handling milk for sale. No owner or operator of a hotel or restaurant who sells only milk to be consumed on the premises where sold, and does not purchase milk from producers, and no producer who delivers raw milk only to a milk dealer, shall be deemed a milk dealer for the purposes of this act."

their respective businesses, their firm members or corporate officers and directors, etc., and each applicant shall state that he "has complied with all pertinent rules, regulations and orders of the board." Other facts may also be required to be stated. Licenses expire on June 30 in each year but may be renewed upon application on or before June 15. Every license shall expressly state that its issuance is subject to the provisions of the act, and the original license or a certified copy thereof shall be conspicuously displayed by the licensee in each place of business conducted by him in the State.

The board, after a hearing or an opportunity to be heard, may decline to grant a license or may grant a conditional or limited license to an applicant, or may suspend or revoke a license already granted, "when satisfied of the existence" of any of the following 13 conditions or facts: That the applicant or licensee has (1) without reasonable cause refused to accept or pay for milk bought by him from a producer, or without reasonable cause or reasonable advance notice refused to accept or pay for milk delivered to him by or on behalf of a producer in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated; (2) in any instance failed without reasonable cause to account and pay for milk bought by him; (3) committed any act or engaged in any course of conduct tending to reduce the price of pure milk to such an extent as to interfere with the supply thereof produced in the State ("which supply is hereby declared to be necessary for the public health, public welfare and trade and commerce"); (4) engaged in a course of action which, in the board's opinion, indicates his inability or unwillingness properly to conduct the business of a milk dealer; (5) been, or is, a party to a combination to fix or maintain prices contrary to any provision of this act; (6) engaged in a course of action such as to satisfy the board of an intent on his part to deceive or defraud customers, producers or consumers; (7) failed to keep records or furnish the statements or information required by the board under any provision of this act; (8) made a statement found to have been false or fraudulent in any material particular, in reliance upon which statement, to any degree, his license as a milk dealer was granted; (9) within three years been responsible, in whole or in part, for any act on account of which a license might be denied, suspended or revoked pursuant to any provision of this act (including, in the event that such applicant or milk dealer is a partnership or corporation, any person owning any substantial interest or having any power or control in such business, who within such period has been responsible for such act); (10) furnished bond or other evidence of financial responsibility, as required, which is unsatisfactory to the board; (11) knowingly bought, processed or handled milk for sale within the State obtained from a dairy farm or dealer not registered under sections 16A to 16G inclusive, of chapter 94 of the General Laws or from a dealer not licensed under section 41 of said chapter or sold to or processed or handled for a dealer not so registered and not so licensed; (12) knowingly bought, processed or handled milk for sale within the State in violation of any of the applicable laws, or of the rules and regulations or requirements of the board or of the local board of health; or (13) violated any provision of the act or any rule, regulation or order of the board made under authority thereof.

One of the recent amendments to the act provides that where the license of the applicant has been refused or revoked "for cause within the next preceding license year," opportunity of hearing (but not due notice) may be dispensed with in the case of the applicant or licensee.

Records and reports.-- Licensees, their affiliates and subsidiaries, are required severally, from time to time, to furnish to the board such information as it may request, upon and in conformity with forms of reports supplied by the board, and such reports shall be verified by the informant by oath or by written declaration that they are made under penalties of perjury. The board is not specifically authorized to prescribe the form of the dealer's records, but is, as stated above, given free access to any books and records of the dealer.

Bonding of dealers.-- Under separate act the Department of Agriculture, of which the Massachusetts Milk Control Board is a part, is required, except under special circumstances, to license all dealers who buy milk or cream from producers and secure from them bond or other security satisfactory to the Commissioner of Agriculture. By one of the recent amendments to the law, the board may, as one of the thirteen grounds mentioned above, refuse to grant a license, or may revoke a license, etc., when satisfied "that the bond or other evidence of financial responsibility required of an applicant is unsatisfactory to the board."

Cooperation with other authorities.-- The board is authorized to confer with legally constituted authorities of other States and of the United States, "with respect to uniform milk control" within and among the several States. It may conduct joint investigations, hold joint hearings and issue joint or concurrent orders; and may enter into one or more compacts for such uniform milk control, subject to such Federal approval as may be authorized or required by law.

#### Powers in Regard to Price Regulation

Prices to be paid producers.-- It is mandatory that the board fix (1) minimum prices to be paid by milk dealers to producers and others for milk bought or in any way handled within the State and (2) "the terms and conditions under which such prices are to be paid." Before doing so the board shall ascertain, "by such examination or investigation as the situation may warrant," what prices, terms and conditions relative to milk in the several localities and markets in the State, "under the varying conditions therein," "will be most beneficial to the public interest and will best protect the milk industry." "All conditions" affecting the milk industry shall be taken into consideration, "including the amount necessary to yield a reasonable return to the producer and to the milk dealer." Not only is the board required to fix minimum producer prices but it shall also fix minimum inter-dealer prices. Orders of the board relative to prices, terms, and conditions shall apply (1) to the locality in which the milk in question is produced, and (2) to the markets in which such milk is sold. The orders may vary in different localities, market production zones or markets according to varying conditions therein.

Method of payment to producers: types of pool; base rating.-- Each order of the board may classify milk "by forms, classes, grades or uses" as the board may deem advisable, and each producer shall be paid "on the basis of the class, grade of use" in which his milk is ultimately sold by the milk dealer. Also, as stated above, the board may fix "the terms and conditions" under which prices for milk shall be paid. In addition, the board is empowered to regulate or control "unreasonable and burdensome surplus of

milk in any market coming from either within or without the commonwealth." Obviously the board under the powers or duties authorized by this language, may order producers paid on the basis of the individual-dealer pool, or even on a flat-price basis. The act does not indicate clearly whether the board may authorize payment to producers on the basis of a market-wide pool. Base rating is not specifically provided for 13/.

Resale prices.- Subject to petition by producers, in the manner described above, the board may, in its discretion, after making examination of the matter and after a public hearing, fix by official order minimum wholesale and/or retail prices for milk for the market or markets affected by the petition. Power to establish such prices is based, however, on the judgment of the board that "the price to the producer established under authority of this act or by any agreement, license, regulation or order made or issued pursuant to any federal law, cannot be (otherwise) maintained." Resale prices fixed, altered, etc., "shall be fair, just and reasonable." Resale prices must be made known by advertising them "in the principal newspapers, and otherwise, in the zone or zones affected."

#### Powers With Respect to Unfair Competition and Trade Practices

The board is specifically charged with the duty of establishing "reasonable trade practices," and is aided in such activity by statutory provisions making certain acts unlawful or grounds for revocation of the dealer's license--acts of a nature to be construed as unfair trade practices or unfair methods of competition; for example, the giving of a rebate or other thing of value in order to lower the price fixed for milk by the board is declared unlawful. A provision with respect to price discrimination has been incorporated in the Act of 1937 and is listed below under "Unlawful acts."

#### Limitations and Exceptions

Although the board is authorized to designate and, "in cooperation with local boards of health," to establish and maintain market production zones, including such zones outside of the State in so far as they supply milk for consumption within the State, "nothing in the act shall be construed to repeal or affect any law or local ordinance, by-law, rule or regulation affecting the public health." This is one of the more important limitations imposed upon the board by the statute. Among other limitations or exceptions are the following: 14/ (1) Excepted from the definition of "milk dealer" is any owner or operator of a hotel or restaurant (but not of a soda fountain) 15/ "who sells only milk to be consumed on the premises where sold, and does not purchase milk from producers;" also excepted is any producer "who delivers raw milk only to a milk dealer;"

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13/ But, as will be seen in PART TWO, is carried out through rules, regulations, or orders.

14/ Some of these have been mentioned elsewhere but are included here for the convenience of the reader.

15/ Until amended by the Act of 1937, hotels, restaurants and soda fountains were included in the definition of "store". "Store"--a dealer under the definition of "milk dealer"--is now defined to include "a grocery store, dairy products store or any similar mercantile establishment at which milk is sold for consumption off the premises."

(2) a dealer who is also a producer, selling to consumers not more than 50 quarts daily, is not required to pay the monthly assessment fee;<sup>16/</sup> (3) the board, provided it shall first determine that such action will not adversely affect market conditions relative to milk, may by order exempt from the operation of all or any portion of the statute any dealer buying milk from any licensed dealer and whose only sales are at a store or stores; (4) the "consent" feature in the act requiring that resale prices may be established only upon written petition of 25 percent of the producers within the market production zone affected by the resale order; and (5) when any agreement, license, rule, regulation or order made or issued pursuant to any relevant Federal law shall be in effect in any market or geographical area within the State, the provisions of this act shall not apply to such market or area--to the extent that they be inconsistent or in conflict with such agreement, license, etc.

#### Violation

Unlawful acts.-- Acts prohibited or declared unlawful include the following: (1) buying milk from producers or others for sale within the State or selling or distributing milk therein by a dealer required to be, but not, licensed; (2) handling or in any way dealing in milk by a dealer if he has reason to believe that such milk has previously been dealt in or handled in violation of any provision of the act or order lawfully made thereunder; (3) distributing or selling by any dealer in any State market, milk from a producer or another dealer "if such milk was acquired from the producer at a cost less than the price fixed by the board to be paid for milk to be distributed in such market;" (4) selling or buying or offering to sell or buy milk--after the board shall have fixed prices to be charged or paid--"at any price less than such price or prices as shall have been so made applicable to the particular transaction;" (5) buying or selling or offering to buy or sell milk through any "method or device" at a price less than as fixed by the board, whether by discount, rebate, free service, advertising allowance, or combination sale; (6) selling any milk within the State or rendering any service in connection with milk "at a price less than the cost of such milk or service, including in the case of milk sold the original purchase price thereof, and in every instance all regular direct and indirect elements of cost of service, physical handling and financial investment in the milk in question;" (7) any selling within the State of milk from any market production zone "or any other source" by a dealer licensed "or required to be licensed" under the act shall be a violation of the statute--if any of such milk has been "acquired at a price less than the minimum price fixed by the board to be paid producers for such milk;" <sup>17/</sup> (8) receiving by any dealer "from a cooperative association or corporation" directly or indirectly any discounts, rebates, or compensations, through rentals of otherwise, for the purpose or with the effect of reducing the net cost to the dealer for milk bought by or through such association or corporation.

<sup>16/</sup> Formerly, the board could exempt such a producer-dealer from the operation of all or any part of the milk control law, provided it found that such exemption would not adversely affect market conditions relative to milk. Such total exemption is no longer permissible under the present act.

<sup>17/</sup> With respect to milk produced outside the State seeking jurisdiction, the U.S. Supreme Court, in Baldwin vs. Seelig, 294 U.S. 511, held invalid a similar prohibition in the New York Milk Control Law.

To the above has been added by one of the recent amendments the prohibition to the effect that no dealer shall discriminate by actual or attempted sales to some buyers at a price lower than in the case of others buying on a similar basis as to grade, quality and quantity, in any market established by the board, "for the purpose of destroying competition of any regularly established milk dealer, or preventing the competition of any person, firm or corporation, who or which in good faith intends and attempts to become a milk dealer." This prohibition against what the amendment terms "locality discrimination" shall be deemed to include and prohibit any scheme of rebates, refunds, commissions or discounts, in the form of money or otherwise, or special services or privileges not extended to all other buyers; and the prohibition shall apply to any person who either as director, officer, agent or servant of such violator, assists, directly or indirectly in the commission of such violation. As will be seen below, special penalty attaches in case of such violation.

Penalties.-- Punishment by fine or imprisonment is provided for in the case of anyone violating any provision of the act or of any rule, regulation or order of the board lawfully made thereunder. The fine (except as noted herein) shall be not more than \$100, imprisonment shall be for not more than one year, both of these penalties may be imposed for any such violation, and the fine may be applied for each day during which such violation shall continue. Punishment for "locality discrimination", noted above, shall be "by a fine of not less than fifty nor more than two hundred dollars."

#### Legal Remedies

Board.-- The board, in addition to its authority in issuing or refusing to grant a license, is authorized to institute such action "at law or in equity" as may be necessary to enforce compliance with any provision of the law or with any rule, regulation or order; and, if necessary in the opinion of the board to protect the public interest, may seek relief by injunction without being compelled to allege or prove that no adequate remedy at law exists. Continued violation of any provision of this act by any person may be enjoined by the Supreme Judicial or Superior Court upon the board's petition. Violation of any provision of the act may be reported to the board by any person and every such complaint shall be acted upon by the board.

Aggrieved persons.-- An applicant for a license or a licensee is accorded several specific rights; in the matter of the board's refusal to grant him a license, revoking his license, etc., he shall be given reasonable notice, in person or by mail, and opportunity to appear before the board and be heard in person or by attorney and he may request the board to exercise its powers with respect to the compulsory attendance of witnesses and the production of books and records. In addition, under one of the recent amendments to the law, the Supreme Judicial Court may revise or reverse any decision of the board "if satisfied that the same was clearly wrong"; provided, however, that the applicant or licensee has filed petition with the court within 20 days after such decision of the board. It should be noted, however, that prior to the entry of a decree of revision or reversal, the court shall make no order to stay or supersede any revocation or cancellation of any license, unless the court finds that the board's action was taken for failure of the dealer to make payments pursuant to the license fee and

assessment provisions of the law and/or for his failure to furnish statements or information required by the board.<sup>18/</sup>

### Status of Cooperative Associations of Producers

By definition, "an association of producers" is a milk dealer, if a corporation and engaged within the State in buying, pasteurizing, bottling, processing, distributing "or otherwise handling" milk for sale. By recent amendment to the act, no sale of milk by a cooperative association, corporation or sales agency to a milk dealer in any marketing area shall be made at less than the applicable minimum prices, terms and conditions of sale as set forth in the orders of the board for milk bought directly from producers who are non-members of a cooperative association, corporation or sales agency; furthermore, when the net return from the cooperative (etc.) to its members is below the net applicable return fixed by the board for a non-member, the association (etc.) shall submit in writing to the board "a full and complete statement in detail, setting forth the amount of the deductions which have been made from the fixed minimum prices of the board and, in addition, a detailed statement of such deductions shall accompany every such payment to the member."<sup>19/</sup>

## PART TWO

### I. Administrative Procedure, Rules, Regulations and Orders

Extent of the board's authority.—The board's authority has been extended by official orders, rules and regulations<sup>20/</sup> over every section of the State, including Martha's Vineyard and Nantucket. Official Order No. 1, dated August 1, 1934, designated 16 geographical areas<sup>21/</sup> as "Milk Marketing Areas." These covered the State, with the exception of the Greater Boston (Area No. 17), New Bedford (Area No. 18) and Fall River (Area No. 19) Markets and these three markets were officially designated as milk marketing areas by Order No. 41, effective January 1, 1935. For the New Bedford and Fall River Marketing Areas the board has issued licenses to milk dealers, but has issued no price-fixing orders, these two areas having been and still being governed as to prices to be paid to producers, method of payment, etc., by Federal orders.

In connection with the designation of milk marketing areas, the board has also designated "milk market production zones." For example, two days after first designating the 16 marketing areas, the board officially

<sup>18/</sup> By this new amendment, any licensee whose license has been revoked or cancelled shall upon notice therefor return his certificate of license to the board.

<sup>19/</sup> These provisions are contained in section 16 of the present law and differ somewhat from provisions of section 16 of the former act.

<sup>20/</sup> From data available July 13, it appears that the board had issued 121 official orders, and a number of rulings, regulations, etc., prior to June 23, 1937, at which time all official orders were rescinded by Official Order No. A and a new series of "A" orders substituted, e.g., A-1, A-2, etc.

<sup>21/</sup> Naming the cities and towns (townships) and in some areas only the towns, which were to constitute each milk marketing area.

declared that "the dairy farms of the producers delivering milk during January, 1934, and holding permits...from local Boards of Health having jurisdiction within the milk marketing areas specified in Official Order No. 1, are hereby designated as Milk Market Production Zones." The current order with respect to production zones is A-2, effective July 1, 1937.

Cities with a population of over 100,000 affected by orders of the board, include: Boston (Area No. 17), Cambridge (Area No. 17), Fall River (Area No. 19), Lowell (Area No. 11A), Lynn (Area No. 17), New Bedford (Area No. 18), Somerville (Area No. 17), Springfield (Area No. 6) and Worcester (Area No. 8C). Other important cities, ranging from 40,000 to 85,000 in population are : Brockton, Brookline, Chelsea, Chicopee, Everett, Fitchburg, Haverhill, Holyoke, Lawrence, Malden, Medford, Newton, Pittsfield, Quincy, and Salem. Of these, Brookline, Chelsea, Everett, Malden, Medford, Newton, Quincy, and Salem are within Area No. 17; the others are located as follows: Brockton (No. 15A), Chicopee (No. 6), Fitchburg (No. 7C), Haverhill (No. 11C) Holyoke (No. 6), Lawrence (No. 11B), and Pittsfield (No. 2A).

Persons controlled or affected.— Milk dealers throughout the State, subject to any exceptions noted in PART ONE, are required to be licensed 22/, pay producers the prices fixed by the board (except in Areas Nos. 18 and 19), and in resale areas, conform to the required schedules of prices and methods of payment. Producers in the designated milk market production zones, and consumers in resale price areas, are likewise affected by the orders of the board issued pursuant to this law.

Resale price fixing limited in scope.— The fixing by the board, under the conditions noted above, of minimum prices for milk and cream at wholesale and retail, had, prior to June 23, 1937, been confined to Milk Marketing Areas Nos. 1A, 1B, 1C, 5, 6, 7C, 7D, 9B, 9D, 14, and 17 (Greater Boston Market). At the present time resale prices are in effect in the following areas: Areas 1B, 1C, 2A, 5, 6, 7B, 7C, 7D, 8C, 9B, 10B, 15B, and 17. There is contemplated action for the setting of prices in Areas 8B, part of 7A, 14A, and 15A.

Classification for purposes of price determination.— In Massachusetts, official grades of milk are established and defined by the Milk Regulation Board. 24/ When applicable, these grades are included in the resale schedules. Fairly typical of items priced in a resale order are: Special Milk, Grade "A" Milk, Selected Milk, Family Milk, Chocolate Whole Milk, Buttermilk, Fat-Free Milk, and Cream (Extra Heavy, Heavy, Medium, Light and Sour). 25/ In the

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22/ While the total number of annual licenses and renewals is unknown to the Dairy Section, some 4,500 licenses had been issued by the board up to the spring of 1936. Of these, about 2,000 went to milk dealers whose businesses were so small that they paid no license fees, but were, however, required to keep records.

23/ These changes, effective July 1, 1937, are in some cases more apparent than real, since some of the areas designated prior to June 23 are now subdivided or regrouped and bear different designations.

24/ Viz., (1) Milk - Raw; (2) Milk - Pasteurized; (3) Grade A Milk - Raw; (4) Grade A Milk - Pasteurized; (5) Special Milk - Raw; (6) Special Milk-Pasteurized; (7) Certified Milk - Raw; (8) Certified Milk - Pasteurized.

25/ Official Order No. A-14 (effective July 1, 1937) for Milk Marketing Area No. 6 (Springfield Area).

current order for the Greater Boston market, only Grade A Milk, Milk (Market), Buttermilk, and Skim Milk are priced, together with the various grades of cream. The milk and cream are priced in the various sizes (quarts, pints, 10-ounce--except cream--, one-half pints, 8-quart, 20-quart, and 40-quart cans), and according to the nature of the transaction; i.e., retail delivery by store or off wagon, retail over counter from store to consumer, milk dealer to stores and wholesale, and pasteurizing dealer to intermediate dealer.

From the producers' standpoint, milk is priced according to its sale or use by the dealer. In the order effective July 1, 1937, for the Greater Boston Area, for example, the "Sales and Use" classification is as follows:

Class I 26/ - All milk sold or distributed as whole milk, chocolate milk or flavored milk, and all milk not specifically accounted for as Class II milk.

Class II - Milk specifically accounted for (a) as being sold or distributed other than as whole milk, chocolate milk or flavored milk, and (b) as actual plant shrinkage within reasonable limits.

Method of payment; base rating; market-wide pooling. - Not only prices are fixed by the board at which dealers shall pay producers, but the terms and conditions of payment are also determined. In official orders typical of marketing areas other than the three areas where Federal orders are existent, the board requires the dealer to account and pay for his milk subject to the provisions of any one of three plans. Plan A is the base rating plan, and under it all dealers who on a stated date were buying milk on a base rating plan approved by the board are required to buy milk on such basis. Plan B is known as the Composite price plan, and Plan C is the Flat price plan. In either Plan B or Plan C the continuance under the plan is premised on the fact that the dealer was operating under such a plan of payment on a stipulated date. The dealer operating under Plan C is required to pay (as a flat price) the Class I price for all his milk. No dealer may change from the plan of payment, under which he was operating on the given date, to another plan, except with the written approval of the board. Under each of the plans the dealer may pay his producers, uniformly, more than the required minimum prices, and shall be governed by the same butterfat differentials, periods for payment, etc.

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26/ In the board's previous order for this market (Order No. 74), it was "presumed" that "whole milk, also skim milk" sold by a dealer to another dealer, should be Class I milk; but if the selling dealer within a stipulated time had furnished proof satisfactory to the board that such milk, or part thereof, had been sold or used by the buying dealer other than as Class I milk, then all or any of such milk should be classified as Class II milk. This provision is not contained in the current order (A-32), but a similar one (in which "skim milk" is deleted and "chocolate milk or flavored milk" is added) is contained in Official Order No. A-34, applicable to all areas except New Bedford and Fall River.

Representative of the way quotas (bases) of producers have been established by the dealer under "Plan A" is the method used in Area No. 4 (under Official Order No. 40, effective December 23, 1934<sup>27/</sup>). Here the dealer "shall assign a daily production quota to each of his respective producers equal to such percent of the average daily deliveries of the respective producers during September, October and November, 1934, as may be necessary to make the total established quotas of all producers equal, so far as practical, to the total quantity of milk used by the distributor as fluid milk." The producers are notified of their respective quotas by the dealer, and these are filed with the board. In adjusting to their sales requirements the volume of milk which they accept, dealers shall prorate milk accepted among all producers in proportion to their established quotas. For "adjudicating appeals for review and adjustment of producers' quotas, the board shall be assisted by a Quota Review Committee, created by the order, consisting of one member elected by the producers, one by the dealers, and a third member "elected by the first two."<sup>28/</sup>

In two other marketing areas the board has provided in official orders the method by which producer bases may be determined and allocated. These are the Greater Boston Area (Orders Nos. 74 and A-32 for Area No. 17) and the Springfield Area (Orders Nos. 79 and A-13 for Area No. 6). For the Boston Area, bases are determined by the board itself; for the Springfield Area, by a Base Committee elected by the producers who sell milk to the dealer.

No market-wide pooling has been provided for in any orders of the board. Such pooling has been conducted only under Federal supervision in the State; viz., in the Greater Boston, New Bedford and Fall River markets. In Order No. 74, the board took a cooperative position by declaring: "In the event that the Secretary of Agriculture of the United States places in effect in Milk Marketing Area No. 17 or part thereof...an order, rule, regulation or agreement for the purpose of or with the effect of setting the terms, prices and conditions of purchase of milk handled by dealers in such area or part thereof, it will be the policy of the board to supply such assistance and set up such cooperative measures as may be necessary to carry out properly the provisions of this or subsequent orders, rules, regulations or agreements and the provisions" of the act.

Trade practices.— By official ruling and orders the board has declared certain practices unfair both as regards the dealer buying from the producers or others and the dealer selling at resale. For example, no dealer shall receive from an individual, cooperative association or corporation, directly or indirectly, any discounts, rebates, or compensation for the purpose or with the effect of reducing below the established minimum Class I and/or Class II price the net cost to such dealer. Nor may a dealer accept services from or render services to a producer or an association of producers from whom he is buying milk without receiving adequate compensation or making a reasonable payment or charge, as the case may be, for such services; and such

<sup>27/</sup> The current order (No. A-10, effective July 1, 1937) continues the base rating procedure provided for in Order No. 40 and provides that the "respective daily production quota of each producer assigned and in effect for June, 1937, shall continue in full force."

<sup>28/</sup> All elections to the Committee are subject to the approval of the board.

compensation, payments, or charges shall be (1) subject to the approval of the board and (2) shall apply equitably to all producers supplying the dealer with milk. In several of the more recent resale rulings or orders it is stated that "no discounts, rebates or free samples shall be given by milk dealers in connection with sales of milk and/or cream." In several other recent resale orders the same prohibition is made with the words, "except as provided by these rulings," added. In the Greater Boston marketing area the delivery of block ice in connection with sales of milk or cream at one time was prohibited, but due to enforcement difficulties the order has been abandoned. In three areas, however, the giving of "free ice" is prohibited.

Records and reports.— The board requires each dealer to keep such books and records as shall be necessary for the purpose of enabling it to determine the extent to which its applicable orders are being carried out. The dealer has also been required to file on forms provided for the purpose: (1) a schedule of his transportation charges; (2) a statement of his selection of a marketing plan covering payments to producers, and in the case of a selection of Plan A, a description of its base-rating provisions; a statement covering the method of computation of the premiums he pays for Grade A or special brands of milk. Each dealer, moreover, has been required at various times to make reports containing the following information: (1) total amount of milk bought from (a) other dealers and (b) producers; (2) total amount of (a) his Class I sales and (b) his Class II sales; (3) prices he paid for his Class I and Class II milk, respectively, each class of 3.7% butterfat content. Another requirement is that dealers shall (a) furnish daily reports to their respective producers of the quantity of milk bought from them, and (b) furnish detailed, "understandable" statements covering price computations when making payments to producers for deliveries of milk. Applicable items to be covered in each such pay-period report, among others, include: (1) Number of days and dates covered by the payment period; (2) gross price, and net price for 3.7% milk with "positive differentiation" of this gross price, and this net price, paid as Class I, Class II, or composite; (3) (a) amount of butterfat differential for each one-tenth of one percent variation from 3.7% - where the dealer is buying on the test basis, and (b) the average test of the producer's milk delivered for the payment period; (4) total number of quarts or pounds of milk delivered by the producer for the payment period; and (5) enumeration of the amounts of the individual deductions per quart or per hundredweight made for transportation, can charge, association fee, and assessments.

### PART THREE

#### Legal Status

Enforcement policy of board.— The board's position with reference to matters of law enforcement is, in the words of the Administrator, as follows: "The board has consistently pursued the policy of endeavoring to secure the cooperation of milk dealers in the administration of the act and has extended every possible consideration to dealers in technical violation of the provisions of the law until satisfied of a deliberate intent on the dealer's part to

violate the law and orders of the board. In accordance with this policy the courts have been resorted to, in enforcement proceedings, only after every opportunity has been afforded to the violating dealer to correct such violations and operate his business lawfully. Under this policy, the majority of these dealers are now operating under conditional licenses, have corrected or are correcting the violations of the law which existed, and are conducting their businesses in compliance with the law and the orders of the board.<sup>28</sup>

Court actions.— As shown in a tabulation and statement received from the board, actions have been instituted in District Court in 61 cases, and in a large percentage of these cases, it is stated, the defendant dealers have hastened to correct their violations of the law, "in which cases the Board has been satisfied with the filing of the cases by the court, without requesting the imposition of punishment by the court. Fines were imposed at the discretion of the court in cases of flagrant violation." Continuing, the statement shows that of the eight cases appealed to Superior Court, that court has upheld the decisions of the lower court in all cases heard to date. "In two cases the violations were so flagrant, deliberate and persistently repeated that the Board considered the dealers in question to be unwilling properly to conduct the business of a milk dealer. Injunctions were requested and obtained permanently restraining two dealers from operating as milk dealers within the Commonwealth."

Specifically, of the 61 complaints taken into District Court, two were taken under a "Resale Price Order" and continued when the order was appealed to the Superior Court, and 59 were on charge of operating without a license from the board. In 25 of these cases the dealers were found guilty and fines were imposed; in 19 cases the dealers were found guilty and the cases were filed, following which, in a substantial number of instances, satisfactory agreement was reached between defendants and the board, and such cases were dismissed or the complaints withdrawn.

An important result of these cases, the board points out, is the restitution of sizable sums of money to producers by the dealers in question in order to obtain reinstatement of their licenses. In three cases such return to producers amounted to \$1800 in one instance and approximately \$1500 and \$1200, respectively, in the others. Similarly in other cases, sums of lesser amount were paid back to producers.<sup>29</sup>

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<sup>29/</sup> It is pointed out by the board that restitution of sums due producers does not follow court action alone. In this connection the board says: "As a result of the auditing of dealers' records by the Board, sums of money have been returned to producers in the ordinary course of administration. An outstanding example in one area is the restitution of \$30,000 to producers by a number of dealers covering an improper deduction made by these dealers from prices paid to producers over a short period of time."